

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George K. Morikawa :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon George K. Morikawa, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George K. Morikawa
15 Bank St.
New York, NY 10014

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of May, 1983.

David Parchuck

Charles C. Day

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 6, 1983

George K. Morikawa
15 Bank St.
New York, NY 10014

Dear Mr. Morikawa:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE K. MORIKAWA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

Petitioner, George K. Morikawa, 15 Bank Street, New York, New York 10014, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 30151).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 21, 1982 at 9:35 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the gain realized by a New York resident upon the sale of real property located in another state must be included as income subject to tax by New York.

II. Whether the amount of tax on preference income paid to another state may be included as part of the credit allowed to a New York resident for income tax paid to another state within the meaning and intent of section 620(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, George K. Morikawa, timely filed a New York State Income Tax Resident Return for the year 1976.

2. On March 27, 1980, the Audit Division issued to petitioner a Notice of Deficiency asserting additional tax due for 1976 in the amount of \$8,933.83, plus interest. This asserted deficiency was subsequently recomputed and thereby reduced in amount to \$8,148.05 plus interest.

3. A Statement of Audit Changes dated February 1, 1978, explained that the above asserted deficiency was based, in part, on a recomputation of petitioner's 1976 personal income tax liability to include as taxable to New York State and New York City a portion (60%) of certain long-term capital gain received by petitioner in 1976. In addition, New York State and New York City minimum income tax was also asserted as due on that portion (40%) of the above capital gain not subject to New York personal income tax.

4. A subsequent Statement of Audit Changes dated August 20, 1979, maintained the same basis for the asserted deficiency, but reduced the amount of the deficiency by allowing itemized deductions totalling \$6,374.00 rather than the standard deduction against petitioner's income. This Statement also reduced from \$3,070.00 to \$3,052.00 the amount of a credit allowed to petitioner for taxes he paid to California in 1976.

5. The revised amount of tax asserted as due on the Notice of Deficiency (\$8,148.05) is shown in the August 20, 1979 Statement of Audit Changes as follows:

	<u>State</u>	<u>City</u>
New York Personal Income Tax	\$8,059.05	\$2,394.73
New York Minimum Income Tax	<u>1,345.76</u>	<u>560.73</u>
	\$9,404.81	\$2,955.46
State Surcharge (2½%)	<u>235.12</u>	<u>--</u>
	\$9,639.93	\$2,955.46
California Credit	<u>(3,052.00)</u>	<u>--</u>
	\$6,587.93	\$2,955.46
New York Tax Withheld	<u>1,033.20</u>	<u>362.14</u>
Total	<u>\$5,554.73</u>	<u>\$2,593.32</u>

6. Petitioner is, and was during the period at issue, a research scientist employed by New York University in New York City. Petitioner testified that he arrived in New York State (from California) on September 1, 1953, that he has been a resident of New York State since that time, and that he has never denied his status as a resident of New York State and New York City.

7. In 1976, Mr. Morikawa sold his ownership interest in a certain parcel of real property located near San Diego, California. This property consisted of two and one-half (2½) acres of land on which was situated a small residence used primarily as a nursery. This property had been owned by various members of the Morikawa family over the years and petitioner was first listed as a co-owner of the property on September 11, 1934. Petitioner was a co-owner of record of this property at the time it was sold.

8. Petitioner's share of the gain received on the sale of the above property was \$88,720.90. He reported this amount as long-term capital gain on Schedule D ("Capital Gains and Losses") attached to his 1976 United States Individual Income Tax Return (Form 1040). Petitioner included fifty percent (50%) of the above amount (\$44,360.45) as subject to personal income tax on both his U.S. Form 1040 and on his (non-resident) Individual California Income Tax Return (Form 540 NR) for 1976.

9. The \$44,360.45 long-term capital gain was the only item of income reported on petitioner's 1976 California Form 540 NR. After deductions for contributions, a tax of \$3,070.00 was shown as due to California. This tax was reduced by an \$18.00 credit, so that a tax of \$3,052.00 was payable to California.

10. In addition to the above tax, petitioner also filed, as an attachment to his California Form 540 NR, a Schedule P ("California Tax on Preference Income") on which additional tax due in the amount of \$1,807.00 was reported. According to instructions found on the reverse side of Schedule P, the amount of "preference income" upon which this tax is based is "...50 percent of the net gain or loss from the sale or exchange of capital assets held more than five years (...), as reported on Schedule D (Form 540)...". The amount of "preference income" thus equalled \$44,360.45.

11. The amount of personal income tax and preference income tax paid by petitioner to California in 1976 totalled \$4,859.00.

12. At line "1" of his 1976 New York State Income Tax Resident Return, petitioner reported total income of \$63,145.58 under "Federal Amount", and New York income of \$18,785.13 under "Column A". The difference between these amounts (\$44,360.45) is equal to fifty percent (50%) of the long-term capital gain received by petitioner in 1976. However, this amount was not reported as subject to New York tax per petitioner's 1976 return. In addition, petitioner neither filed a New York minimum income tax computation schedule (Form IT-220) nor reported any minimum income tax as payable at line "11" of his 1976 New York State Income Tax Resident Return.

13. In its recomputation of petitioner's 1976 New York tax liability, the Audit Division allowed a credit of \$3,052.00 for California tax paid. This credit was allowed as a reduction against the total New York State personal

income tax and minimum income tax asserted as due, including the two and one-half percent ($2\frac{1}{2}\%$) surcharge added to that total. The amount of credit so allowed does not include any portion of the "tax on preference income" paid by petitioner to California. In addition, no credit for California taxes paid was allowed against the New York City personal income tax and minimum income tax asserted as due.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income for that year, subject to the modifications specified by section 612 of the Tax Law. The gain received by petitioner, George K. Morikawa, on the sale of property located in California was properly included in petitioner's Federal adjusted gross income for 1976 and is not among those modifications reducing Federal adjusted gross income (and hence reducing New York adjusted gross income of a resident individual) specified by section 612(c) of the Tax Law. Accordingly, said gain should have been included in petitioner's New York adjusted gross income for 1976.

C. That the portion of petitioner's 1976 long-term capital gain not subject to New York personal income tax (e.g. 40% of said gain) is an item of

tax preference subject to New York minimum income tax within the meaning and intent of sections 601(A) and 622(b)(4) of the Tax Law.¹

D. That section 620(a) of the Tax Law provides:

"A resident shall be allowed a credit against the tax otherwise due under this article (Article 22) for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state or by the District of Columbia, upon income both derived therefrom and subject to tax under this article."

E. That the above credit allowable to a New York resident for income tax paid to another state includes minimum income tax on items of tax preference paid to another state where the credit is for taxes on items of tax preference which can be considered derived from or having a source in another state. In the instant case, the item of tax preference arose from real property located in the State of California (20 NYCRR 121.1; see Matter of Samuel Levine and Mildred Levine, State Tax Comm., September 28, 1979). Accordingly, petitioner is allowed a resident credit in an amount up to but not exceeding \$4,859.00, based on the amount of personal income tax and preference income tax paid to California in 1976 (see Findings of Fact "9", "10" and "11"). The actual dollar amount of the credit to which petitioner, George K. Morikawa, is entitled is to be computed in accordance with the limitations specified by section 620(b) of the Tax Law and 20 NYCRR 121.2. (See Matter of Samuel R. Weltz, State Tax Comm., July 31, 1981).

F. That pursuant to section 601-B of the Tax Law, the credits against tax otherwise allowable under section 620 of the Tax Law are not allowed as a

¹ Section 622(b)(4) of the Tax Law provides for computation of this item of tax preference by subtracting one-fifth of the net (Federal) long-term capital gain deduction (\$8,872.09) from the (Federal) item of tax preference for capital gains (44,360.45).

credit against the tax surcharge. Pursuant to section 622(d) of the Tax Law, the credits against tax otherwise allowable under section 620 of the Tax Law are not allowed as a credit against the minimum income tax. Accordingly, petitioner's allowable resident tax credit may be allowed only as a credit against the amount of New York State personal income tax due (\$8,059.05).²

G. That the petition of George K. Morikawa is granted to the extent indicated in Conclusion of Law "E", but is in all other respects denied. The Audit Division is directed to recompute the Notice of Deficiency in accordance herewith, and said Notice of Deficiency, as recomputed, is hereby sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

² There is no credit based on income taxes paid to another state available as a means of reducing the amount of income tax payable by petitioner to New York City.